Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Grande Communications, Inc.	)	
	)	
Petition for Declaratory Ruling	)	
Regarding Self-Certification	)	WC Docket No. 05-283
Of IP-Originated VoIP Traffic	)	

COMMENTS OF AT&T INC.

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I. INTRODUCTION AND SUMMARY

AT&T Inc. and its affiliates (collectively, AT&T)[1] respectfully submit the following comments on the above-captioned petition for declaratory ruling filed by Grande Communications, Inc. (Grande) regarding IP-PSTN traffic (*i.e.*, traffic that originates in Internet Protocol (IP) format on an IP network and terminates in circuit-switched format on the Public Switched Telephone Network).[2] Grande's petition asserts that access charges do not apply when IP-PSTN traffic is terminated on the PSTN, and it asks the Commission to approve a self-certification procedure that would insulate Grande from any potential liability for access charges when Grande sends IP-PSTN traffic to a terminating LEC. In response to the petition, AT&T raises the following four points.

First, Grande's petition highlights the need for the Commission to comprehensively and expeditiously reform its intercarrier compensation regime. Indeed, the controversy over IP-PSTN traffic identified by Grande is merely a symptom of a much larger underlying problem inherent in that regime: the application of disparate intercarrier compensation rates and rate structures to different services and carriers when they use the PSTN for essentially the same purposes.

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[1] On November 18, 2005, SBC Communications Inc. closed on its merger with AT&T Corp. The resulting company is now known as AT&T Inc. Thus, in these comments "AT&T" refers to the merged company, including its ILEC operating subsidiaries, unless otherwise noted.

[2] Petition for Declaratory Ruling of Regarding Self-Certification of IP-Originated VoIP Traffic, WC Docket No. 05-283 (October 3, 2005) (Grande Petition). Grande acknowledges that the IP-PSTN traffic at issue in its petition is different from the IP-in-the-middle traffic at issue in other petitions pending before the Commission. Grande Petition at 25 n.34. *See* Petition of the SBC ILECs for a Declaratory Ruling That UniPoint Enhanced Services, Inc. d/b/a PointOne and Other Wholesale Transmission Providers Are Liable for Access Charges, WC Docket No. 05-276 (filed Sept. 21, 2005) (IP-in-the-Middle Enforcement Petition); Petition for Declaratory Ruling that VarTec Telecom, Inc. Is Not Required to Pay Access Charges to Southwestern Bell Telephone Company or Other Terminating Local Exchange Carriers When Enhanced Service Providers or Other Carriers Deliver the Calls to Southwestern Bell Telephone Company or Other Local Exchange Carriers for Termination, WC Docket No. 05-276 (filed Aug. 20, 2004). Accordingly, the Commission need not and should not delay resolution of these other petitions while it considers the instant petition from Grande.

Second, to ensure a stable transition to a unified intercarrier compensation regime, the Commission should rule that, on a prospective basis, interstate access charges apply to IP-PSTN traffic. Doing so will help ensure that traditional telephone service remains affordable and universally available as new IP-PSTN services continue to proliferate.

Third, the absence of any express Commission guidance on the compensation applicable to IP-PSTN traffic has led to substantial uncertainty in the industry over whether VoIP providers are required to pay access charges on IP-PSTN traffic, and that, in turn, has led to a climate in which many IP-based providers are not, in fact, paying access charges on such traffic. As a result, providers like AT&T – who face declining access revenues as a result of this *de facto* industry practice, but who seek to compete in the IP-enabled services market – will face increasing competitive pressure to conform to the *de facto* industry practice and to terminate IP-PSTN traffic on the PSTN without payment of access charges. If the Commission continues to remain silent on this issue, the Commission is effectively leaving these providers to argue that, in order to fulfill their fiduciary duty to maximize corporate resources, they have no choice but to pursue whichever compensation arrangements are, within the bounds of the law, most aligned with their business interests. The net result of the Commission's lack of guidance is that providers will continue to be embroiled in disputes over payment obligations, regulatory arbitrage will continue to distort healthy competition, and, ultimately, instability in the intercarrier compensation regime will jeopardize the universal availability of affordable telephone service.

Fourth, however the Commission ultimately rules on IP-PSTN traffic, it should not approve Grande's self-certification proposal. Grande's proposal is flawed in several respects and should be rejected.

II. Discussion

A. Grande's Petition Highlights the Urgent Need for Comprehensive Intercarrier Compensation Reform.

The root cause of the current industry dispute over the appropriate compensation applicable to IP-PSTN traffic – as well as disputes over many other types of traffic – is the Commission's antiquated intercarrier compensation regime. Under that regime, different types of carriers and different types of services pay different rates for their use of the PSTN "even though there may be no significant differences in the costs among the carriers or services."[3] This patchwork of intercarrier compensation rates creates numerous and substantial "opportunities for regulatory arbitrage."[4] Indeed, the Commission has candidly acknowledged the seriousness of this problem: "Our current classifications require carriers to treat identical uses of the network differently, even though such disparate treatment usually has no economic or technical basis. These artificial distinctions distort the telecommunications markets at the expense of healthy competition."[5] As Chairman Martin observed just last week, the Commission is "'going to have to find a way to harmonize [the varying payment arrangements for different kinds of traffic] so everyone is paying at the same rate and [the] opportunity for arbitrage is eliminated.'"[6]

To that end, AT&T has been a staunch supporter of the Commission's intercarrier compensation reform efforts. Prior to the merger, both SBC and AT&T Corp. partnered with a diverse group of carriers from different segments of the telecommunications industry, known as

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[3] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 ¶ 5 (2001) (*First Intercarrier Notice*).

[4] *First Intercarrier Notice* ¶ 11.

[5] *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, FCC 05-33 ¶ 15 (released March 3, 2005) (*Second Intercarrier Notice*).

[6] *Lynn Stanton, Martin Eyes USF Contribution Changes, Says Act is Explicit on Cable Franchises*, TR Daily (Dec. 8, 2005).

the Intercarrier Compensation Forum (ICF), to develop a comprehensive plan for unified intercarrier compensation reform, which was filed with the Commission in October 2004.[7] The ICF plan was soon followed by a variety of reform proposals from other industry groups and state regulators.[8]

In response to these external proposals and its own internal staff analysis of various bill-and-keep mechanisms, the Commission launched a further notice of proposed rulemaking in February 2005, seeking additional comment on comprehensive intercarrier compensation reform.[9] The Commission remarked that the record before it confirmed an "urgent need" to "replace the existing patchwork of intercarrier compensation rules with a unified approach."[10] The Commission further observed that its existing regulatory scheme for intercarrier compensation "is increasingly unworkable in the current environment and creates distortions in the marketplace at the expense of healthy competition."[11] In a separate statement, Commissioner Copps candidly announced that the current intercarrier compensation system "is Byzantine and broken. . . . Intercarrier compensation is a must-do item for this Commission this year. It should be our number one telecommunications priority."[12]

Despite this urgent need for a unified intercarrier compensation regime that eliminates arbitrage, the fact remains that, almost five years after the *First Intercarrier Notice*, the Commission has yet to adopt a comprehensive reform plan. The absence of such a plan deprives

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[7] *See* Letter from Richard Cameron, counsel for ICF, to Marlene Dortch, FCC, CC Docket No. 01-92 (Oct. 5, 2004) (transmitting ICF plan). *See also Intercarrier Further Notice* ¶¶ 40-44.

[8] *See Second Intercarrier Notice* ¶¶ 45-59.

[9] *Second Intercarrier Notice* ¶¶ 1-4; Appendix C.

[10] *Second Intercarrier Further Notice* ¶ 3.

[11] *Second Intercarrier Further Notice* ¶ 3.

[12] *Second Intercarrier Notice*, Separate Statement of Commissioner Michael J. Copps.

service providers of the regulatory certainty they need to accurately assess the potential risks and rewards of deploying IP-PSTN services and the advanced broadband IP networks over which they ride. This investment-deterring regulatory climate is fundamentally inconsistent with the Commission's statutory mandate to "remov[e] barriers to infrastructure investment" for advanced broadband services.[13]

Rather than devoting scarce Commission resources to merely treating the discrete symptoms of the intercarrier compensation malady (e.g., Grande's petition), the Commission should turn its full attention to the root cause of the problem: the "Byzantine and broken" intercarrier compensation system.[14] And the Commission should do so immediately. The telecommunications industry and, more importantly, American consumers simply cannot continue to wait for the Commission to act on intercarrier compensation reform. Accordingly, AT&T strongly encourages the Commission to proceed as expeditiously as possible with comprehensive intercarrier compensation reform that will provide the long term stability necessary to fulfill Congress's vision for a competitive, deregulatory telecommunications marketplace in the U.S.

B. To Ensure Stability During the Transition to a Unified Intercarrier Compensation Regime, the Commission Should Apply Interstate Access Charges to IP-PSTN Services on a Prospective Basis.

To ensure the stability of the intercarrier compensation regime during the transition to a unified rate structure, AT&T continues to believe that the Commission should – on a prospective basis – apply interstate access charges uniformly to all IP-PSTN services.[15] As the Commission

[13] *See* Section 706 of the Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996), reproduced in the notes under 47 U.S.C. § 157.

[14] *Second Intercarrier Notice*, Separate Statement of Commissioner Michael J. Copps.

[15] *See* SBC Comments, *IP-Enabled Services*, WC Docket No. 04-36, 77-81 (March 28, 2004).

recognized in the *Vonage Order*, the IP-PSTN services offered by Vonage and other service providers are inherently interstate in nature and cannot be practicably separated into discrete interstate and intrastate components.[16] While the Commission stopped short of ruling on intercarrier compensation issues in the *Vonage Order*,[17] the logical conclusion that flows from the *Order* is that, because IP-PSTN services are jurisdictionally interstate, interstate access charges should apply to those services. Indeed, before the *Vonage Order* was issued, there was already industry support for the application of interstate access charges to IP-PSTN services, even among PSTN-based carriers that are dependent on *intra*state access charges to maintain affordable and universally available telephone service for their subscribers.[18]

Moreover, the application of interstate access charges to all IP-PSTN traffic is a reasonable approach from an economic perspective. As IP-PSTN services become widespread, many subscribers will use them as replacements for ordinary circuit-switched telephony. The compensation applicable to typical telephony services traditionally would involve the assessment of reciprocal compensation for local calls, interstate access charges for long distance calls that cross state boundaries, and intrastate access charges for toll calls that remain within state boundaries. Of those three types of payment obligations, reciprocal compensation usually is the lowest and intrastate access charges are the highest. Interstate access charges, which fall in

[16] *See Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, FCC 04-267 (released Nov. 12, 2004) (*Vonage Order*).

[17] *Vonage Order* ¶ 44.

[18] *See* NECA Comments, WC Docket No. 04-36, at 9-13 (March 28, 2004); Time Warner Telecom Comments, WC Docket No. 04-36, at 42 (March 28, 2004); SBC Comments, WC Docket No. 04-36, at 77-81 (March 28, 2004). *See also* Verizon Comments, WC Docket No. 04-36, at 31-47 (March 28, 2004).

between, thus serve as a rough proxy for the average compensation that PSTN providers would otherwise receive for their termination services.[19]

Indeed, although customer usage patterns vary, the application of interstate access charges may be particularly appropriate because flat-rated VoIP services may be attracting heavy users of circuit-switched toll services, for which compensation is recovered through interstate and (higher) intrastate access charges.[20] While somewhat inexact, this approach will nonetheless provide stability during the intervening period before the Commission adopts a unified solution to the issue of intercarrier compensation. Further, the Commission has already determined that existing interstate access charges are reasonable as a form of compensation for the termination of interstate traffic. Indeed, the Commission has already removed implicit universal service support from these charges and has found them to be consistent with sections 201 and 202 of the Act in connection with the CALLS and MAG plans.[21] Thus, the application of interstate access charges to IP-PSTN traffic would provide a rational transition to more comprehensive intercarrier compensation reform.

C. Absent Guidance from the Commission, the Competitive Pressures of the Marketplace Will Force Providers to Conform to the *De Facto* Industry Practice of Terminating IP-PSTN Traffic on the PSTN Without Payment of Access Charges.

Despite the logic and reasonableness of applying interstate access charges to IP-PSTN traffic on a going forward basis, the Commission has yet to act on the requests by AT&T and

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[19] *See* Time Warner Telecom Comments, WC Docket No. 04-36, at 42 (March 28, 2004).

[20] *See VoIP fast becoming Mainstream Service yet multiple standards still exist*, M2 Presswire, 2004 WL 74988509 (Apr. 26, 2004).

[21] *See Access Charge Reform*, CC Docket No. 96-262, Sixth Report and Order, 15 FCC Rcd 12962 (2000); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613 (2001).

others for this result, even though the Commission has two pending proceedings in which it could do so.[22] At the same time, the Commission has also declined to rule on a competing proposal from Level 3 to apply reciprocal compensation to IP-PSTN traffic on a going-forward basis. In December 2003, Level 3 filed a highly-publicized forbearance petition regarding IP-PSTN traffic. Without conceding that access charges do, in fact, apply to such traffic, Level 3 asked the Commission to forbear from any statutory provisions or regulations that may require the imposition of access charges on IP-PSTN traffic.[23] In response, dozens of parties filed extensive comments and *ex partes* expressing their views on whether access charges apply to IP-PSTN traffic under the Commission's existing rules and whether the Commission should grant Level 3's petition.[24] Some parties argued that, as a result of the ESP exemption, IP-PSTN traffic is not subject to access charges today under existing Commission rules, and should not, as a policy matter, be subject to access charges going forward.[25] Other parties, AT&T among them, argued that the ESP exemption does not and should not apply to IP-PSTN traffic and that, instead, such traffic is and should be subject to access charges.[26] Despite having spent fifteen months evaluating Level 3's petition, the Commission was not able to reach a decision on its merits, and Level 3 ultimately withdrew its petition on March 21, 2005.[27] Thus, notwithstanding

[22] *See IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28, ¶¶ 61-62 (released March 10, 2004); *Second Intercarrier Notice* ¶¶ 20, 80.

[23] Level 3 Petition at 5-6 n.16.

[24] *See* WC Docket No. 03-266.

[25] *See, e.g.*, CompTel/Ascent Comments, WC Docket No. 03-266 (March 1, 2004); Global Crossing Comments, WC Docket No. 03-266 (March 1, 2004); AT&T Corp. Comments, WC Docket No. 03-266 (March 1, 2004); Vonage Reply Comments, WC Docket No. 03-266 (March 31, 2004).

[26] *See, e.g.*, Verizon Comments, WC Docket No. 03-266 (March 1, 2004); BellSouth Comments, WC Docket No. 03-266 (March 1, 2004); SBC Comments, WC Docket No. 03-266 (March 1, 2004); ITTA Joint Comments, WC Docket No. 03-266 (March 1, 2004).

[27] Letter from John Nakahata, Level 3, to Marlene Dortch, FCC, WC Docket No. 03-266 (March 21, 2005).

extensive efforts to obtain authoritative guidance, the communications industry still lacks a clear and unambiguous ruling from the Commission directly addressing which form of compensation should be applied to IP-PSTN traffic on a going-forward basis.

In the absence of any explicit Commission guidance on the appropriate compensation applicable to IP-PSTN traffic, the prevailing industry practice has been for VoIP providers and/or their CLEC partners to terminate such traffic on the PSTN without paying access charges. In particular, most IP-PSTN traffic is terminated today via local interconnection trunks or local business lines (PRIs) without payment of access charges by carriers claiming the protection of the ESP Exemption, often over the objection of the terminating ILECs.

This *de facto* state of affairs has left providers such as AT&T in an untenable position. Following the merger of SBC and AT&T Corp, AT&T is one of the nation's largest providers of access services. AT&T is also a leading provider of IP-based services. As a result of prevailing industry termination practices, AT&T has generally not been able to collect access charges on IP-PSTN traffic in its role as an ILEC. At the same time, AT&T's own IP-based services are subject to substantial pricing pressure from competitors who do not pay access charges on IP-PSTN traffic, making it competitively disadvantageous for AT&T to incur access charges when terminating its IP-PSTN services on the PSTN.

As other carriers with roots in the PSTN expand their portfolios to include IP-PSTN services, they too will be subject to these same marketplace forces that disincent parties from paying access charges on IP-PSTN traffic. By declining to provide guidance on the compensation applicable to IP-PSTN traffic, the Commission is effectively leaving these providers to argue that, in order to fulfill their fiduciary duty to maximize corporate resources, they have no choice but to pursue whichever compensation arrangements are, within the bounds

of the law, most aligned with their business interests. Thus, the net result of the Commission's lack of guidance is that providers will continue to be embroiled in disputes over payment obligations, regulatory arbitrage will continue to distort healthy competition, and, ultimately, instability in the intercarrier compensation regime will jeopardize the universal availability of affordable telephone service.

To the extent the Commission is comfortable with this result, then it should take no action. But if the Commission – like AT&T and many other stakeholders – wants to create a regulatory environment that truly benefits consumers by incenting economically rational competition, then the Commission should: (1) rule that interstate access charges apply to IP-PSTN traffic on a prospective basis; and (2) expeditiously and comprehensively reform its intercarrier compensation regime.

D. Grande's Proposed Self-Certification Procedure Is Flawed and Should Be Rejected by the Commission.

Whichever way the Commission ultimately resolves the issue of the applicability of access charges to IP-PSTN traffic, Grande's "self-certification" proposal is flawed and should be rejected. Grande proposes that when one of its customers certifies in writing that the traffic it sends to Grande is enhanced traffic (including "VoIP-originated traffic" or other "enhanced, IP enabled traffic"), then Grande "may rely on the customer's self-certification when [Grande] makes decisions about how to route such traffic for termination."[28] As long as Grande does not possess "actual knowledge" that the certification is false, Grande would be permitted to route the traffic over local interconnection trunks to the terminating LEC.[29] The terminating LEC, according to Grande's proposal, would be required to "treat that traffic as local traffic for

[28] Grande Petition at 25.

[29] Grande Petition at 21-22, 25.

intercarrier compensation purposes and may not assess access charges for such traffic . . . ."[30] The net result of this self-certification proposal would be to insulate Grande from any potential liability for misrouting traffic and evading access charges that may be due for any purportedly "enhanced" traffic it delivers to terminating LECs over local interconnection trunks.

Grande's self-certification procedure, however, suffers from at least three substantial defects.

First, Grande has misrepresented the content of the self-certifications that it purports to be using today. In its petition, Grande claims that under its self-certification procedure, Grande's customers have certified that the traffic they send to Grande "originated in IP protocol at the premises of the calling party" and "is enhanced services traffic, *i.e.*, traffic that, at a minimum, undergoes a net protocol conversion (apart from any other enhanced capabilities that may be made available to end users of the service)."[31]

Notwithstanding Grande's assertions in the body of its petition, the sample self-certification that Grande appended to its petition contains no such representations. The relevant portion of this sample self-certification, which appears to be taken from a contract for termination services between Grande and one of its VoIP provider customers, says only that Grande's customer represents that the "traffic it delivers to Grande for Services hereunder shall be enhanced traffic as such is defined in 47 U.S.C. Section 153(20) ('VOIP Traffic') and which originated as VOIP Traffic."[32] Nowhere in the self-certification are Grande's customers required to explicitly certify that the alleged VoIP traffic originated *at the premises of the calling party* in

[30] Grande Petition at 25.

[31] Grande Petition at 17.

[32] Grande Petition, Exhibit 1.

IP protocol, as Grande erroneously asserts in its petition. Nor are Grande's customers required to self-certify that the alleged VoIP traffic *undergoes a net protocol conversion*, as Grande claims in its petition. Moreover, the statutory provision cited in Grande's self-certification (47 U.S.C. § 153(20)) is the Communications Act's definition of an "information service," which does not contain any references to "VoIP traffic," "the premises of the calling party," or "net protocol conversion."

The discrepancies between the assertions in Grande's petition and the actual text of the self-certification used by Grande in the marketplace are significant. The absence of any references to traffic originating "at the premises of the calling party" or undergoing a "net protocol conversion" would arguably permit a less-than-forthright service provider to argue that IP-in-the-middle traffic is "enhanced" under the terms of Grande's proposed self-certification.[33] As AT&T has explained elsewhere, it is presently losing more than $1 million per month in access charges on IP-in-the-middle traffic that carriers continue to terminate over local interconnection trunks,[34] despite this Commission's clear pronouncement that access charges are due on such traffic.[35] In light of these carriers' continued defiance of the Commission's rules, the flawed self-certification proposed by Grande would likely prove to be an inviting vehicle for such carriers to engage in even greater access charge avoidance on IP-in-the-middle traffic. Accordingly, the Commission should reject Grande's petition.

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[33] The requirement in Grande's self-certification that the traffic at issue must have "originated as VoIP traffic" does not necessarily foreclose this argument because a provider of IP-in-the-middle transport could, however disingenuously, claim that it, as an "end user" under the ESP Exemption, "originated" the traffic as VoIP traffic on its IP-in-the-middle network before it was converted to circuit-switched format and delivered to Grande.

[34] IP-in-the-Middle Enforcement Petition at 6 & Exhibit D.

[35] *Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, WC Docket No. 02-361, Order, FCC 04-97 (2004).

Second, Grande argues that it should be able to rely on its customer's self-certification unless Grande "possesses knowledge that the entity in fact is not an enhanced or information service provider or that the alleged enhanced services, in fact, are telecommunications services . . . ."[36] But if Grande does not have "actual knowledge" of a false self-certification, then Grande claims that it should be entitled to rely on its customer's self-certification *and that any terminating LEC* who receives traffic from Grande should also be bound by that same self-certification and "may not assess access charges for such traffic."[37]

Grande's proposed standard for valid reliance on a self-certification is inadequate to provide a meaningful deterrent to prevent the unlawful misrouting of traffic and avoidance of access charges. The "actual knowledge" standard proposed by Grande would relieve Grande of any obligation to take reasonable, good faith efforts to determine whether its customer's self-certifications were legitimate. Indeed, Grande's "don't ask don't tell" proposal would give it a perverse incentive to stick its head in the sand precisely to avoid coming into possession of any information that might call into question the veracity of its customer's self-certification.[38] Worse still, such self-interested indolence would directly benefit Grande at the expense of a terminating LEC, who would be forced to rely on a self-certification from a party (Grande's customer) with whom the terminating LEC has no direct relationship and thus no direct means to evaluate the legitimacy of the party's self-certification. The Commission should reject Grande's self-serving "actual knowledge" standard by denying Grande's petition.

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[36] Grande Petition at 21.

[37] Grande Petition at 25.

[38] *See* SBC Comments, Petition for Declaratory Ruling that Vartec Telecom, Inc. Is Not Required to Pay Access Charges to Southwestern Bell Telephone Company or Other Terminating Service providers or Other Carriers that Deliver the Calls to Southwestern Bell Telephone Company or Other Local Exchange Carriers for Termination, WC Docket No. 05-276, at 14-15 (Nov. 10, 2005).

Third, in asking the Commission to simply "declare" that Grande's self-certification proposal authorizes Grande to route traffic as it pleases without paying access charges, Grande is effectively asking the Commission to re-write its access charge rules in a declaratory ruling proceeding. Nothing in the Commission's rules today permits Grande to decline to pay access charges based solely on a self-certification from one of its customers. To the contrary, those rules say that access charges "*shall* be computed and assessed" on users of access services.[39] Thus, for Grande's self-certification proposal to be approved, the Commission would need to modify its existing access charge rules to account for self-certifications and, presumably, conforming changes would need to be made to LEC access tariffs and interconnection agreements.

The Commission cannot, however, modify its rules without following the rulemaking requirements of the Administrative Procedure Act.[40] In fact, the Commission precedent cited by Grande in support of its self-certification procedure confirms this point and, ironically, undermines Grande's petition. Grande cites to the self-certification procedures the Commission adopted in the unbundled network element (UNE) context to allow requesting CLECs to self-certify that they meet the conditions for purchase of high-capacity loops or transport, as well as combinations of certain UNEs.[41] Grande also cites the self-certification procedure the Commission adopted in the universal service context for rural LECs to self-certify that they meet the statutory definition of a "rural telephone company" and are thus eligible for universal service

[39] *See* 47 C.F.R. § 69.5(b) (emphasis added).

[40] *See* 5 U.S.C. § 553(b).

[41] Grande Petition at 21 (citing *Unbundled Access to Network Elements*, WC Docket No. 04-313, Order on Remand, FCC 04-290, ¶ 234 (Feb. 4, 2005); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183, ¶ 29 (June 2, 200)).

support.[42] In each of these instances, however, the self-certification procedures at issue modified or amended the Commission's existing rules and were adopted by the Commission in *rulemaking* proceedings, not in response to petitions for declaratory ruling.[43] Thus, these examples provide no support for Grande's current petition; indeed, they refute Grande's claim that the Commission can create the self-certification procedure requested by Grande in a declaratory ruling procedure. For all of these reasons, the Commission should reject Grande's flawed self-certification proposal.

III. CONCLUSION

For the forgoing reasons, the Commission should deny Grande's petition for declaratory ruling.

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[42] Grande Petition at 21 (citing *Self-Certification as a Rural Telephone Company*, Public Notice, DA 97-1748 (Sept. 23, 1997)).

[43] *See Unbundled Access to Network Elements*, WC Docket No. 04-313, Order on Remand, FCC 04-290, ¶ 234 (Feb. 4, 2005); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183, ¶ 29 (June 2, 200); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, ¶ 310 (May 8, 1997). *See also Self-Certification as a Rural Telephone Company*, Public Notice, DA 97-1748 (Sept. 23, 1997) (implementing certification requirements previously adopted by the Commission in the universal service proceeding).